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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA,
SAN FRANCISCO DIVISION

GOOGLE LLC,

Plaintiff and Counter-defendant,

v.

SONOS, INC.,

Defendant and Counter-claimant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**SONOS, INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL RE
SONOS'S MOTION FOR SUMMARY
JUDGMENT REGARDING GOOGLE'S
CONTRACT-RELATED CLAIMS**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Sonos, Inc. (“Sonos”) hereby respectfully submits this Administrative Motion to Seal (“Administrative Motion”) in connection with Sonos’s Motion for Summary Judgment Regarding Google’s Contract-Related Claim (“Sonos’s Motion”). Specifically, Sonos seeks to file under seal the information and/or document(s) listed below:

DOCUMENT	PORTIONS TO BE SEALED	DESIGNATING PARTY
Sonos’s Motion	Portions highlighted in blue	Sonos
Sonos’s Motion	Portions highlighted in green	Sonos and Google
Exhibit 1 to Kwasizur Declaration	Entire Document	Sonos and Google
Exhibit 1 to Schmidt Declaration	Entire Document	Sonos
Exhibit 2 to Kolker Declaration	Entire Document	Sonos and Google
Exhibit 3 to Kolker Declaration	Entire Document	Sonos
Exhibit 4 to Kolker Declaration	Entire Document	Sonos
Exhibit 5 to Kolker Declaration	Entire Document	Sonos
Exhibit 6 to Kolker Declaration	Entire Document	Sonos
Exhibit 7 to Kolker Declaration	Entire Document	Sonos
Exhibit 8 to Kolker Declaration	Entire Document	Sonos
Exhibit 12 to Kolker Declaration	Entire Document	Sonos

II. LEGAL STANDARD

Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). *See* Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435

1 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a ‘strong
 2 presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mutual*
 3 *Auto. Insurance Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

4 The Ninth Circuit has recognized that two different standards may apply to a request to
 5 seal a document – namely the “compelling reasons” standard or the “good cause” standard.
 6 *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22,
 7 2021) (citing *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir.
 8 2016)). The compelling reasons standard applies to any sealing request made in connection with
 9 a motion that is “more than tangentially related to the merits of a case.” *Id.* A party seeking to
 10 seal materials submitted with a motion that is “more than tangentially related to the merits of the
 11 case” must demonstrate that there are “compelling reasons” to keep the documents under seal.
 12 *WhatsApp Inc. v. NSO Grp. Techs. Ltd.*, 491 F. Supp. 3d 584, 596 (N.D. Cal. 2020) (citing *Ctr.*
 13 *for Auto Safety*, 809 F. 3d at 1101-1102). What constitutes a compelling reason is left to the
 14 “sound discretion of the trial court.” *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting *Nixon*, 435
 15 U.S. at 599).

16 Under the compelling reasons standard, “a court may seal a record only if it finds a
 17 ‘compelling reason’ to support such treatment.” *Blessing*, 2021 WL 6064006, at *12. In applying
 18 the “compelling reasons” standard, the Ninth Circuit has found appropriate the sealing of
 19 documents where court records could be used “as sources of business information that might
 20 harm a litigant’s competitive standing.” *See Ctr. for Auto Safety*, 809 F.3d at 1097. “Confidential
 21 business information in the form of ‘license agreements, financial terms, details of confidential
 22 licensing negotiations, and business strategies’ satisfies the ‘compelling reasons’ standard.”
 23 *Hetland v. LendingTree, LLC*, No. 19-CV-02288-JSC, 2021 WL 2313386, at *1 (N.D. Cal. May
 24 3, 2021) (quoting *Exeltis USA Inc. v. First Databank, Inc.*, Case No. 17-cv-04810-HSG, 2020
 25 WL 2838812, at *1 (N.D. Cal. June 1, 2020)).

26 **III. THE COURT SHOULD SEAL SONOS’S CONFIDENTIAL MATERIAL**

27 The portions of Sonos’s Motion highlighted in blue and green, and the exhibits listed
 28 above, contain references to Sonos’s confidential business information and trade secrets,

including Sonos's research and development processes. The specifics of how these functionalities and processes operate is confidential information that Sonos does not share publicly. Thus, public disclosure of such information may lead to competitive harm as Sonos's competitors could use these details regarding the architecture and functionality of these products to gain a competitive advantage in the marketplace with respect to their competing products. Additionally, some of the green highlighted portions of the Motion include terms to confidential agreements that are not public. Those same agreements are Exhibit 1 to the Kwasizur Declaration and Exhibit 2 to the Kolker Declaration. Disclosure of this information would harm Sonos's competitive standing by giving Sonos's competitors highly sensitive information about Sonos's business dealings with other entities. A less restrictive alternative than sealing the portions of Sonos's Motion and the exhibits indicated in the table above, would not be sufficient because the information sought to be sealed is Sonos's confidential business information and trade secrets and is integral to Sonos's legal arguments. See Declaration of Clem Roberts in Support of Administrative Motion filed concurrently herewith, ¶ 4.

IV. CONCLUSION

In compliance with Civil Local Rule 79-5(d) and (e), unredacted versions of the above-listed documents accompany this Administrative Motion and redacted versions are filed publicly. A proposed order is being filed concurrently herewith. For the foregoing reasons, Sonos respectfully requests that the Court grant Sonos's Administrative Motion.

Dated: February 6, 2023

ORRICK HERRINGTON & SUTCLIFFE LLP
and
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By: /s/ Clement S. Roberts
Clement S. Roberts

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